



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: FEBRUARY 07, 2023

IN THE MATTER OF:

Appeal Board No. 626333

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determinations disqualifying the claimant from receiving benefits, effective May 17, 2022, on the basis that the claimant voluntarily separated from employment without good cause and, in the alternative, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to May 17, 2022 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed October 21, 2022 (), the Administrative Law Judge overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed as a full-time security officer by the employer, a healthcare facility, from September 28, 2020 through February 13, 2022. The employer's Handbook indicates an employee absent for three consecutive days without proper notification will be considered to have resigned. The claimant received a handbook but did not read it. He was a member of the union.

The claimant and another security officer, who was also a desk supervisor, did not get along. The claimant worked the day shift and the coworker worked the night shift but their shifts overlapped during the shift change. In addition, on occasion they worked the same shift.

In August 2021, the claimant began complaining to Human Resources and the union that the coworker had been making threats to him.

On February 10, 2022, the employer's regional director held a mediation with the claimant and the other security officer, along with the claimant's supervisor, the union president and the union delegate, in response to the claimant's complaints. The claimant and the other security officer were told offensive and abusive conduct towards other coworkers was not acceptable and there was zero tolerance for workplace harassment. The other security officer agreed to move forward with the claimant in a better manner. The claimant indicated his discomfort with moving forward with that security officer because he felt the employer was not adequately responsive to his complaints.

On February 13, 2022, the claimant went on a medical leave. Thereafter, he applied for FMLA due to the situation with the other security officer. The claimant's FMLA was approved from March 31, 2022 through May 4, 2022.

On May 9, 2022, the claimant attended a virtual meeting with the regional director, the union president and the union delegate to confirm the claimant's return to work. The regional director notified the claimant that the employer had told the other security officer that her behavior towards the claimant was unacceptable and assured the claimant he would be safe upon his return to work. The claimant indicated that a coworker told him that the other officer was telling others not to talk to the claimant when he came back to work. The regional director told him that coworker comments were hearsay and could not be substantiated. The director told the claimant that she was done and there would be no more back and forth about the hearsay. The claimant wanted the employer to take disciplinary action toward the other officer, such as a suspension. He decided the employer would take no further action against the other officer and he hung up. The claimant did not contact either the employer or the union at any point after that meeting.

On May 11, May 12 and May 13, 2022, the claimant did not report for work or notify the employer that he would be absent. On May 16, 2022, the employer notified the claimant that it had concluded he had abandoned his job and had

quit because he was a no-call / no-show for three consecutive days.

OPINION: The credible evidence establishes the claimant resigned from his employment by not reporting to work or notifying the employer that he would be absent on May 11, May 12 and May 13, 2022. Although the claimant had concerns about future interactions with the other security officer, the employer had intervened and instructed the officer that offensive and abusive conduct towards coworkers was not acceptable and there was zero tolerance for workplace harassment. The officer had agreed to move forward with the claimant in a better manner. Therefore, the claimant's dissatisfaction with the employer not imposing a more forceful punishment, such as a suspension, against the other officer did not provide him with good cause for his failure to return to work and for his absence without notifying the employer on May 11, May 12 and May 13, 2022. Due to his failure to report to work or call in his absence on those three days, the claimant is deemed to have voluntarily separated from his job without good cause. Accordingly, the claimant's quit was under disqualifying

conditions for unemployment insurance purposes.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective May 17, 2022, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

As the claimant is disqualified on the basis of voluntary separation from employment without good cause, there is no need to rule on the alternate determination of misconduct.

The claimant is denied benefits with respect to the issue decided herein.

MICHAEL T. GREASON, MEMBER